

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45638  
Docket No. MW-48348  
26-3-NRAB-00003-240009

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –  
(IBT Rail Conference

**PARTIES TO DISPUTE:** (

(Soo Line Railroad Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Elite Rail Services LLC) to perform routine Maintenance of Way and Structures Department work (including, but not limited to, torching and removal of rail, tie removal, hauling scrap materials to Rockford, Minnesota, general cleanup of the worksite and grading the roadbed) in the vicinity of Mile Post 35 to Mile Post 36 on the Camden Line on the Paynesville Subdivision and in the vicinity of Mile Post 7.2 to Mile Post 12 of the MN&S Spur on April 26, 2021 and continuing through May 12, 2021 (System File C-33-21-080-09/2021-00023150 SOO).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract out said work and failed to enter into good-faith discussions to reduce the use of contractors and increase the use of Maintenance of Way forces as required by Rule 1 and Appendix O.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants T. Anderson, A. Brodt, J. Gillen, C. Davis, C. Winkler, B. Jenneman, M. Peterson, A. Olson, M. Mannie and J. Soma shall now “\*\*\* be allowed a proportionate share EACH of five hundred fifty (550) hours at their applicable straight time and/or overtime rates of pay, along with all benefits and work opportunities

lost on April 26, 2021 and continuing through May 12, 2021.’  
(Emphasis in original).”

**FINDINGS:**

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On March 26, 2021 the Carrier issued pre-contracting out notice 2021-0024 to the General Chairperson. The notice identifies the project and location — sale and removal of tracks in place at the Bensenville IL industrial park — as well as tentative dates (April 12, 2021 through December 31, 2021) for the contractor to remove purchased track. The description of work included removal of “3000 +/- feet of track between painted marks” and “all rail OTM” as well as grading the “old” right-of-way. “CP forces will establish disconnect in track to denote starting point of work.” Reasons for contracting: “[t]he contractor will provide and utilize equipment, and owns the material which is being removed. Contractor purchases and owns material being removed from the location. Additional manpower not cost effective to utilize for short periods.”

On April 14, 2021 the parties convened in conference to discuss pre-contracting notice 2021-0024.

On April 19, 2021 the Organization issued its post-conference letter stating, in part, as follows:

At such pre-contracting conference between the parties, the Carrier described the removal of tracks and ties in place in Bensenville IL. The scope of the track and tie removal will include removal of all purchased material, including track, rail ties, and OTM. The contractor will grade

out the former roadbed. The contractor for this project would be Midstates Rail LLC.

The Carrier has informed the Organization that the tracks and property in the Bensenville Industrial Park have been sold, and that the disconnect from the CP tracks will be done by Carrier MOW forces. The Carrier informed the Organization that all harvesting of rail, ties, and OTM would only be on this newly sold property.

The Organization concludes that if any other removal of rail, ties, and OTM occurs outside of the newly sold property, the BMWED reserves the right to file claims against such work. In the event that claims are not filed, such will not be considered as our acquiescence and will be without prejudice to our position.

On April 23, 2021 the Carrier issued its post-conference letter stating “[t]he company disagrees with your position in this letter.” The Carrier states it engaged in good-faith discussions during conference and disagrees with BMWED that conference did not occur in good faith. During conference the Carrier stated that the force would provide all flagging for protection while the contractor removed rail it purchased from the Carrier. Also, the Carrier noted the reason for contracting was the rail was sold in place disconnected from the mainline. The BMWED force disconnected the tracks from the mainline. The contractor purchased the scrap rail and removed it from the in-place location.

On June 25, 2021 the Organization filed its claim alleging numerous rules violations. BMWED states that Elite Rail Services performed basic track duties in the vicinity of MP 35 to MP 36 on the Camden Line, Paynesville Subdivision and in the vicinity of MP 7.2 to MP 12 of the MN&S Spur. Work included torching rail and removal of it, hauling scrap material to Rockford, MN, general cleanup at the worksite and grading the roadbed. Ten (10) contract workers worked fifty-five (55) each for a total of five hundred fifty hours (550). The force was available to perform this work had it been assigned to them. The Carrier failed to issue a proper advance notice and failed to engage in good-faith discussions during conference.

On August 19, 2021 the Carrier denied the claim stating the scrap materials were purchased by the contractor and contract workers removed the rail. Thus, the Carrier did not own or maintain the track and materials. Claimants received compensation for their work performed during the contractor’s removal of scrap materials. The force

provided flagging protection at all times to ensure the outside force did not encroach on Carrier property. The Organization has no claim over contractor-owned property.

On October 14, 2021 the Organization filed an appeal with the Carrier's Highest Designated Officer ("HDO") stating CPKC does not deny that the work occurred as stated in the claim, that is, no advance notice as required by Rule 1 and Appendix O. The Carrier provided no documentation to prove its affirmative defense that it sold the scrap materials with rail in-place to the contractor. Thus, contractors performed work on Carrier property with no protection or seniority in violation of Rule 1. The force customarily performs this work and would have done so had the Carrier assigned it to them. The Carrier did not uphold the integrity of the Agreement.

On December 13, 2021 the HDO denied the appeal by reiterating its post-conference letter and first-level claim denial. That is, the Carrier issued a proper advance notice and engaged in good-faith discussions during conference. During conference on April 14, 2021, the Carrier noted the tracks are scrap in place as they were already disconnected from CPKC tracks. The disconnect work was performed by the force. A contractor was required to perform the claimed work using contractor-owned special equipment operated by contract workers with special skills because the Carrier no longer owned the tracks and the force is not trained to operate the contractor's equipment. Given BMWED's concerns, the Carrier stated it would review the contract but not disclose a copy of it to the Organization. CPKC maintains its right to contract out under the Agreement.

The gravamen of the dispute is whether the Agreement was violated when the claimed work was performed by an outside force. The Board finds the claimed work is covered by general-scope Rule 1 and the BMWED established that the force has performed this work. There is no dispute the claimed work was performed by an outside force. These findings, standing alone, establish prima facie rules violations alleged by the Organization; however, the findings do not stand alone based on the following narrative.

The Agreement does not expressly prohibit contracting out but there are contracting-out protocols and requirements to comply with in Rule 1 and Appendix O. For example, the Carrier must issue an advance notice of its intent to contract out scope-covered work and conference upon request. The notice issued March 26, 2021 and conference convened on April 14, 2021. The notice states the scope of work, where and when it occurs and Carrier reasons for contracting. The notice is adequate for Rule 1.

The parties disagree whether Appendix O good-faith discussions occurred during conference. Based on the evidentiary record established by the parties including post-conference letters, the Board finds conference discussions were sufficient for establishing the sale of scrap materials and rail in-place to the contractor and work performed by the force (disconnecting rail from mainline and flag protection) to ensure the contractor did not intrude on Carrier property. Once sold the rail was owned by the contractor and the contractor used its large equipment operated by its workers to take physical possession of the contractor's property. This is adequate for Rule 1(c) where special equipment by contractor not owned by the Carrier and special skills by contract workers to operate the contractor's equipment support outsourcing the claimed work.

In view of the findings on notice, conference, Rule 1 and Appendix O, the BMWED's alleged rules violations are not sustained. Accordingly, the Board denies the claim.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of March 2026.